

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 25345 of 2009(K)

**1. C.V.RAJENDRAN,
... Petitioner**

Vs

**1. STATE INFORMATION COMMISSION, KERALA,
... Respondent**

2. SRI.E.K.BALACHANDRAN, CHALIL VEEDU,

3. SRI.M.G.PRADEEP KUMAR,(FORMER SPIO,KSRTC

4. SRI.V.J.SAJU,

For Petitioner :SRI.T.M.CHANDRAN

**For Respondent :SRI.M.AJAY, SC, STATE INFORMATION
COMMN**

The Hon'ble MR. Justice P.N.RAVINDRAN

Dated :21/10/2009

O R D E R

P.N.RAVINDRAN, J.

W.P(C) No.25345 of 2009-K

Dated this the 21st day of October, 2009.

J U D G M E N T

The petitioner was appointed as Works Manager in the Regional Workshop of the Kerala State Road Transport Corporation at Kozhikode on 5.9.2007. He continued as Works Manager in that station till 2.9.2008. During the said period, he was also the State Public Information Officer appointed by the Kerala State Road Transport Corporation in the Regional Workshop at Kozhikode. Before the

petitioner took charge as Works Manager at Kozhikode, the third respondent was the State Public Information Officer in that office. The second respondent had submitted an application dated 29.6.2007, under the Right to Information Act, 2005 asking for the details regarding recoveries effected towards repayment of a loan availed by him from the Kerala State Financial Enterprises, from the salary of Sri.P.Vishnu Nambeesan, who was one among the sureties.

2. The third respondent did not furnish the information sought within the period of 30 days stipulated under section 7(1) of the Right to Information Act. After the expiry of the period of 30 days, the third respondent was transferred out and the petitioner took charge as the Works Manager and the State Public Information Officer on 5.9.2007. The petitioner did not however take steps to act on the second respondent's application. Shortly before the petitioner took charge as the State Public Information Officer, the second respondent sent a letter dated 17.8.2007 to the State Information Commission at Thiruvananthapuram complaining that though 45 days have passed after he made an application for information under the Right to Information Act, till date the information has not been furnished. He also requested the State Information Commission to take steps to enable him to get information sought in his application dated 29.6.2007. The said letter was received by the State Information Commission on 20.8.2007. The State Information Commission registered the said letter as a complaint

(C.P.No.771/(1)/2007/SIC dated 21.2.2009) and sent Ext.P1 notice dated 8.1.2008 to the petitioner, the State Public Information Officer in the Regional Workshop at Kozhikode, enclosing a copy of the complaint dated 17.8.2007. The petitioner was also directed to pass orders on the application for information dated 29.6.2007 within ten days and to report compliance before 21.1.2008.

3. Instead of furnishing the information to the second respondent, the petitioner sent Ext.P2 letter dated 17.1.2008 to the State Information Commission wherein the information sought by the second respondent was also set out. The State Information Commission made available the information furnished by the petitioner to the second respondent and thereafter sent Ext.P3 letter dated 13.4.2009 to the petitioner calling upon him to show cause why penalty should not be imposed on him under Section 20(1) of the Right to Information Act. The petitioner submitted Ext.P4 reply wherein he contended that he took charge as the State Public Information Officer only on 5.9.2007 and that he was unaware of the request made by the petitioner under the Right to Information Act till 8.1.2008. He has also stated that immediately thereafter the information sought was furnished on 17.1.2008. The State Information Commission considered the petitioner's reply, heard him and his successor and predecessor officers and passed Ext.P5 order dated 31.7.2009 imposing on the petitioner the penalty of Rs.15,000/-. A penalty of Rs.5,000/- each was imposed on the petitioner's predecessor

and successor also. Ext.P5 is under challenge in this writ petition.

4. Sri.T.M.Chandran, the learned counsel appearing for the petitioner contends that as the period of 30 days stipulated in Section 7 (1) of the Right to Information Act expired on 28.7.2007, the application made by the second respondent stood rejected by virtue of sub section (2) of Section 7 thereof and therefore as the second respondent did not file a fresh application for information, it cannot be said that any application was pending with the petitioner. The learned counsel also contended that the petitioner was unaware of the second respondent's application for information till 8.1.2008 and that the information sought was furnished within ten days thereafter, on coming to know of the application and therefore it cannot be said that he has acted mala fide.

5. Per contra, Sri.M.Ajay, the learned standing counsel appearing for the State Information Commission contended that stipulation in section 7(1) of the Act that the application for information will be deemed to have been rejected is one intended to enable the applicant to file an appeal under Section 19 or a complaint under Section 18 before the State Information Commission complaining that the information sought has not been furnished or that there has been no response to his request for information within the time limit specified in the Act. He submits that as the successor of the third respondent who was the former State Public Information Officer, the petitioner had a duty

to inspect the registers and to ascertain and satisfy himself that no application under the Right to Information Act is pending beyond the period of 30 days. The learned counsel submitted that even if the 30 days period had expired, the State Public Information Officer should have acted on the application and furnished the information.

6. I have considered the submissions made at the Bar by the learned counsel appearing on either side. It is not in dispute that the receipt of the second respondent's application for information was duly entered in the register of applications maintained in the Regional Workshop at Kozhikode. The third respondent, the then State Public Information Officer did not furnish the information within 30 days. He was thereafter transferred out, the petitioner was appointed and the petitioner assumed charge on 5.9.2007. He was also admittedly appointed as the State Public Information Officer. He had a duty to inspect the register and ascertain whether any application for information is pending. Till he received Ext.P1 letter, the petitioner did not discharge that duty by examining the register. He did not enquire whether any request for information under the Right to Information Act is pending. He acted only when the State Information Commission sent Ext.P1 letter and even at that stage, instead of sending the information to the second respondent he passed on the information to the State Information Commission. As the petitioner did not furnish the information within a reasonable time from the date of assuming charge as the State Public

Information Officer, it cannot be said that he had acted diligently in discharging his duties as the State Public Information Officer. On going through Ext.P5 and after hearing the submissions made at the Bar, I am satisfied that the findings arrived at by the State Information Commission, cannot be said to be perverse or unreasonable.

I accordingly hold that there is no merit in the writ petition. The writ petition fails and is dismissed. However I grant the petitioner an opportunity to pay the penalty of Rs.15,000/- imposed as per Ext.P5 order in three equal monthly instalments. The first instalment shall be paid on or before 15.12.2009, the second on or before 15.1.2010 and the third on or before 15.2.2010. If the petitioner commits default in remitting any one instalment, it will open to the State Information Commission to recover the balance amount of penalty in lump, in accordance with law.

Sd/-

P.N.RAVINDRAN

JUDGE

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PA to Judge

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